

PUBLIC CHAPTER NO. 225

SENATE BILL NO. 1196

By Mr. Speaker Ramsey; Senators Burchett, Black, Raymond Finney, Beavers, Bunch, Burks, Crowe, Crutchfield, Lowe Finney, Harper, Haynes, Henry, Herron, Jackson, Johnson, Ketron, Kilby, Kurita, Kyle, Marrero, McNally, Norris, Southerland, Stanley, Tate, Tracy, Watson, Wilder, Williams, Woodson

Substituted for: House Bill No. 867

By Mumpower, Lundberg, Matheny, McDaniel, Vaughn, Overbey, Williams, Roach,

Mr. Speaker Naifeh, Fitzhugh, Odom, Rinks, Ferguson, Towns, Mike Turner, Favors, Coleman, Litz, Hood, DuBois, Shepard, Pinion, Kevin Brooks, Jim Cobb, Hill, Phillip Johnson, Harry Brooks, Montgomery, Bell, Gresham, Hensley, Floyd, Eldridge, Casada, Dean, Curtis Johnson, Niceley, Watson, Harrison, Sargent, Maggart, Hawk, Baird, Swafford, Todd, Lynn, Bone, Shaw, Bass, Fincher, Hackworth, Pitts, Rowland, Moore, Yokley, Bibb

AN ACT to amend Tennessee Code Annotated, Title 38, Chapter 6 and Title 40, Chapter 35, relative to the collection of biological specimens from certain persons for DNA analysis.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Johnia Berry Act of 2007".

SECTION 2. Tennessee Code Annotated, Section 40-35-321, is amended by adding the following new subsection (e):

(e) (1) When a person is arrested on or after January 1, 2008, for the commission of a violent felony, as defined in subdivision (3), such person shall have a biological specimen for the purpose of DNA analysis taken to determine identification characteristics specific to the person as defined in subsection (a). After a determination by a magistrate or a grand jury that probable cause exists for the arrest, but prior to such person's release from custody, the arresting authority shall take the sample using a buccal swab collection kit for DNA testing. The biological specimen shall be collected by the arresting authority in accordance with the uniform procedures established by the Tennessee Bureau of Investigation, pursuant to § 38-6-113, and shall be forwarded by the arresting authority to the bureau, which shall maintain the sample as provided in § 38-6-113. The court or magistrate shall make the providing of such a specimen a

condition of the person's release on bond or recognizance if bond or recognizance is granted.

(2) The clerk of the court in which the charges against a person described in subdivision (1) are disposed of shall notify the bureau of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, then the bureau shall destroy the sample and all records thereof, provided there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.

(3) As used in this subsection "violent felony" means:

- (A) First or second degree murder;
- (B) Aggravated kidnapping or especially aggravated kidnapping;
- (C) Aggravated assault;
- (D) Aggravated child abuse;
- (E) Robbery, aggravated robbery or especially aggravated robbery;
- (F) Aggravated burglary or especially aggravated burglary;
- (G) Carjacking;
- (H) Sexual battery, sexual battery by an authority figure or aggravated sexual battery;
- (I) Statutory rape by an authority figure or aggravated statutory rape;
- (J) Rape, aggravated rape, rape of a child or aggravated rape of a child;
- (K) Aggravated arson;
- (L) Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (3);
- (M) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (3);
- (N) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (3);

(O) Criminal responsibility, under § 39-11-402(2), for any of the offenses enumerated in this subdivision (3);

(P) Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (3); or

(Q) Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (3).

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. The DNA office within the Knoxville regional crime laboratory of the Tennessee Bureau of Investigation shall henceforth be named and known as the "Johnia Berry DNA Office".

SECTION 5. For purposes of establishing procedures and protocols for collecting and forwarding biological specimens, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes it shall take effect on January 1, 2008, and shall apply to any person arrested for an applicable offense on or after such date.

PASSED: May 9, 2007



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of May 2007



PHIL BREDESEN, GOVERNOR